

AMENDMENTS TO THE DRAWINGS:

The attached sheets of drawings include changes to Figure 2 to show inner, center, and outer layers as well the center layer comprising a substrate and a matrix structure. The attached sheets are more clear with darker lines than those originally filed.

Attachment: Replacement Sheets

**REMARKS**

A substitute specification and a marked-up copy is provided. No new matter is entered by way of this amendment to the specification.

Responsive to the drawing objections, the attached sheets of drawings include changes to Figure 2 to show inner, center, and outer layers, as well the center layer comprising a substrate and a matrix structure. The attached sheets are more clear with darker lines than those originally filed. No new matter is entered by way of these amendments.

The claims have been amended responsive to the drawing objections and to use terms consistent with the specification and drawings. See that the boundary sealing layer is illustrated as 7 on Figure 2. Withdrawal of this objection is solicited.

The claims have been amended to remedy the stated basis of the claim objections, the 35 USC 112, first and second rejections.

Withdrawal of the claim objection and rejections is therefore requested.

Claims 26-31 and 33 were rejected as obvious over JAPUNTICH, HUNTER, ISHIDA '716, MULCHI, and ISHIDA '304.

Claim 32 was rejected in further view of BAUMANN. Claims 34-36 in further view of BRYANT and MARTIN; claim 37 in further view of KAIMER; claims 38-39 in further view of TANAKA and claim 40 in further view of WILLIAMS and SHERMAN.

The presently presented claims recite the invention, including the composition of the filtering medium, the structure of the valve achieving the recited functionality, and the boundary sealing layer, which in total provide the disclosed protective mask against biological agents.

At this point, the issue is not whether each individual element being recited can be found in the prior art, and then through hindsight be rationalize to be an obvious modification of some base reference (JAPUNTICH). Rather, the question is how would one of skill have reasonable been motivated to modify the prior art, i.e., JAPUNTICH.

This rejection is improper as the Examiner has failed to present a *prima facie* case of obviousness.

The Examiner bears the initial burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If that burden is met, then the burden shifts to the Appellants to overcome the *prima facie* case with argument and/or evidence. (See *Id.*) In the present rejection, the Examiner has not satisfied this burden.

As discussed above, the present invention provides a mask for the protection against biological agents.

Since this concept, with the features recited, is neither disclosed nor suggested by the prior art, one cannot say that this is an obvious concept.

In performing the required obviousness analysis, the

Examiner is required to make findings of fact and must provide an articulated reasoning supporting the rejection. The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

In *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727 (2007), the Supreme Court, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006), stated that rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.

The Examiner hasn't made sufficient findings of fact to support the rejection and rather relies on mere conclusory statements. Such a rejection fails to present an articulated reasoning, based on facts of record, that provide a rational underpinning to support the legal conclusion of obviousness. Without such articulated reasoning, based on proper facts, there is no support for the legal conclusion of obviousness.

Thus, the Examiner has not established obviousness because the applied references neither teach nor would have suggested to the skilled artisan the proposed modification of necessary to arrive at the recited invention, and therefore the rejection is improper.

JAPUNTICH does not disclose, as per claim 26, that each of the central panel, the upper panel, and the lower panel is

comprised of a plurality of layers where at least one of the layers composed of a cellulose-based substrate supporting a fiber-based matrix structure of borosilicate micro-glass fibers bound together by a vinyl acetate resin, and iii) a silicone based coating imparting hydrophobic properties on the structure and the substrate. See Official Action page 7.

No other reference teach the layer composed of a cellulose-based substrate supporting a fiber-based matrix structure of borosilicate micro-glass fibers bound together by a vinyl acetate resin, and iii) a silicone based coating imparting hydrophobic properties on the structure and the substrate. This is evidence that such a layer, especially for a mask, is non-obvious.

The reasoning of the Official Action is *ex post facto* and does not appear based on what any reasonable person skilled in the art would likely combine.

Further, the valve recited is not disclosed by JAPUNTICH. Applicant does not see that the Official Action has addressed the combination of features as now recited and does not see that any reference teaches this valve construction, yet alone with a mask. Accordingly, this is another indication that the claim is non-obvious.

The Official Action indicates that the recited boundary sealing layer, recited in both the independent claims and the dependent claims is obvious and merely a design optimization

problem (page 17). However, the rejection does not show that the general conditions of the claim are disclosed within the art. Page 17 acknowledges that KAIMER does not teach either using natural rubber latex and a sealing layer or the recited thickness or application amounts. Nor has the Official Action shown that the recited thickness or application amounts are anywhere near the amounts used for other materials. Without such a showing, the rejection is without support and speculative.

Applicant believes that both the independent claim and the dependent claims are non-obvious. Any claim not specifically discussed is believed patentable at least for depending from an patentable claim.

Should there be any matters that need to be resolved in the present application; the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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REL/jr

**APPENDIX:**

The Appendix includes the following item(s):

- a Substitute Specification and a marked-up copy of the originally-filed specification
- Replacement Sheets for Figures 1-13 of the drawings